D.B. SPECIAL APPEAL (W) NO.200/2006.
J.V.V.N.Ltd., Jodhpur
Vs.
Jogaram & Anr.

Date : 24th April 2007.

HON'BLE MR. P.B.MAJMUDAR, J.
HON'BLE MR. DINESH MAHESHWARI,J.

Mr. Manoj Bhandari, for the appellant
Mr. K.S.Yadav, for the respondent.

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BY THE COURT (PER HON'BLE MAJMUDAR, J.)

In this matter, notice has been issued to respondent workman alone who is the main contesting party and notice of stay application has also been issued. Today, the matter has come before us for admission. Both the learned counsel appearing for the respective parties submitted that the matter can be disposed of at this stage itself. In that view of the matter, we have heard the learned counsel for the respective parties for final disposal.

The appellant herein i.e., Jodhpur Vidyut Vitran Nigam Ltd., has challenged the order of the learned Single Judge passed in S.B.Civil Writ Petition No.3257/2000 by which the learned Single Judge has dismissed its writ petition and has confirmed the award made by the Labour Court, Sri Gangangar dated 16.4.1999 in Labour Case No. 129/98 (137/95). The learned Labour Court after adjudicating the industrial dispute between the appellant and respondent

workman came to the conclusion that the termination of the workman Joga Ram amounts to retrenchment and it was found to be in violation of Section 25-F of the Industrial Disputes Act, 1947. The learned Labour Court, accordingly, set aside the oral termination order dated 1.5.93 and passed an order of reinstatement of the workman with backwages and other consequential benefits. The learned Labour Court on appreciation of evidence found that the concerned workman has worked for more than 9 years before the aforesaid termination order was passed.

Against the award made by the Labour Court, the appellant -employer preferred the aforesaid writ petition before this Court. The learned Single Judge came to the conclusion that Labour Court's award is based on appreciation of evidence. The learned Single Judge also found that the respondent workman was not engaged for fixed term and ultimately, it was found that the order in question amounts to retrenchment of the workman without following the procedure prescribed under the Industrial Disputes Act, 1947. After considering the finding of the Labour Court, the learned Single Judge found that there is no infirmity in the order of the Labour Court and accordingly, the learned Single Judge dismised the writ petition by confirming the award passed by the Labour

Court. The appellant was not satisfied with the said finding of the learned Single Judge and has, therefore, preferred this appeal.

At the time of hearing of the appeal Mr Manoj Bhandari, learned counsel for the appellant has submitted that the respondent - workman has already been reinstated by the appellant by its order dated 21st April 2007 subject to final outcome of this appeal. At the reqeust of counsel for the appellant Mr Bhandari, the said order is kept on record.

In our view, so far the impugned award regarding reinstatement is concerned, the Labour Court has given cogent reasons for the same and the learned Single Judge has also rightly confirmed the same. The said order, therefore, does not suffer from any infirmity and accordingly, the same is not required to be disturbed by this Court. It is not in dipsute that the concerned workman has served for more than 9 years with the Department. It is also not in dispute that the duty which he was assigned is of parennial nature. On appreciation of evidence when the Labour Court has found that the order of termination is in violation of Section 25-F of the Industrial Disputes Act, 1947, in our view, the said finding of fact cannot be disturbed by this Court in exercise of powers

under Article 226 and 227 of the Constitution of India. Mr Bhandari is also not in a position to attack the said order of reinstatement by pointing out that Sec.25-F is not applicable in the facts of the case. Learned counsel Mr. Bhandari could also not show us any cogent reason so as to disturb the order of reinstatement passed by the Labour Court. We, accordingly, confirm the order of learned Labour Court regarding reinstatement which is approved by the learned Single Judge of this Court.

Mr Bhandari, however submitted that so far as payment of backwages is concerned, in the facts of the case, full backwages could not have been awarded by the learned Labour Court. In support of his contention, he has relied on the judgment of the Apex Court in M.L.Binjolkar Vs. State of M.P., (2005) 6 SCC 224 wherein in Para-6, the Apex Court held as under:

> "We find that so far as the back wages issue is concerned, there are two periods involved. The first was from 1.10.1997 up to High Court's order dismissing the writ petitions filed by the State while permitting fresh action. As noticed above, the Tribunal had directed that the employees concerned were to be paid full back wages. The High Court had not interfered with that part of the order. Therefore, so far as this period is concerned, the High Court's direction in the impugned judgment for payment of 50% of the back wages does not appear to be correct. So far

> as the rest of the period is concerned, obviously that relates to the period up to the High Court's order i.e. 1.3.2002. Though, the High Court has not specificlaly dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya (2002) 6 SCC 41; Rajendra Prasad Arya v. State of Bihar (2000) 9 SCC 514; Sonepat Coop. Sugar Mills Ltd. v. Ajit Singh (2005) 3 SCC 232; Haryana State Coop. Land Development Bank v. Neelam (2005) 5 SCC 91; Manager, Reserve Bank of India v. S. Mani (2005) 5 SCC 100; and Allahabad Jal Sansthan v. Daya Shankar Rai (2005) 5 SCC 124 we do not find any scope for interefrence. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view. That being so, we do not think it appropriate to interfere with the quantum of 50% fixed by the High Court."

In the case of U.P. State Brassware Corpn. Ltd. & Anr. Vs. Uday Narain Pandey (2006) 1 SCC 479, on the question of backwages, the Hon'ble Supreme Court has held in para 22 as under:

> "No precise formula can be laid down as to under what circumstances payment of entire backwages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It would not be granted mechanically only because on techincal grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

Relying on the said judgments, Mr Bhandari submitted that since the concerned employee has not led evidence to substantiate that he was not employed anywhere all throughout and that for all these years, he had not been doing anything for meeting the needs of his family, it is not a case in which full backwages should have been granted for the whole period. Mr. K.S. Yadav, learned counsel for the respondent fairly submitted that this Court can appropriately modify the order of backwages as it deems fit in the facts of the case.

Considering the submissions of both the learned counsel for the parties and overall facts and circumstances of this case, we think it just and proper to modify the order of backwgaes passed by the Labour Court to the extent that till the order of reinstatement passed by the Labour Court, i.e., till 16th April 1999, the concerned workman shall not be entitled for any backwages. However, from the date of award of the Labour Court, the workman shall be entitled to full backwages till his reinstatement in service. We modify the order of the Labour Court to the aforesaid extent. However, this modification has been made in view of the consent given by the learned counsel for the respondent workman in this behalf and we clarify that concerned workman shall otherwise be

entitled to all consequential benefits like seniority etc. during the intervening period as if he has continued in service except for backwages as indicated above.

In the above terms, the appeal is partly allowed to the extent of modification of the order regarding backwages. There shall be no order as to costs.

(DINESH MAHESHWARI), J. **(P.B.MAJMUDAR), J.**

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